



Federal Aviation Administration
Office Of The Chief Counsel
Office Of Dispute Resolution For Acquisition (ODRA)

ADR SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is entered into this ____ day of _____, _____ by and between [Contractor] (hereinafter the "Contractor") and the Federal Aviation Administration (hereinafter the "FAA" or the "Agency"), for themselves, their officers, directors, executives, managers, employees, agents, attorneys, divisions, related and subsidiary entities, affiliates, successors and assigns (all of whom are collectively referred to as the "parties").

WHEREAS, the Agency [issued a solicitation for]/[awarded a contract to Contractor] on [date] under [Solicitation]/[Contract] No. _____, for the [description] (hereinafter the ["Solicitation"]/"Contract"]); and

WHEREAS, certain controversies have arisen with respect to the [award]/[performance] of the Contract (hereinafter the "Controversies"); and

WHEREAS, Contractor has previously filed [a protest]/[a contract dispute] with the FAA Office of Dispute Resolution for Acquisition ("ODRA") regarding such Controversies, which has been docketed as [Case Docket Number]; and

WHEREAS, by agreement dated _____ (hereinafter the "ADR Agreement"), the parties agreed to attempt to resolve the Controversies by means of alternative dispute resolution ("ADR") proceeding in the form of a [minitrial]/[mediation], with the assistance of an ADR neutral; and

WHEREAS, the ADR proceeding was conducted with the ADR neutral in accordance with the ADR Agreement on [date(s)]; and

WHEREAS, the parties were successful in achieving a full and complete settlement of the Controversies through ADR and wish to commit the terms of their settlement to writing; and

WHEREAS, each party has been represented by counsel, has been apprised of its rights regarding the settlement, and enters into the settlement freely and voluntarily.

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, the parties agree as follows:

1. NO ADMISSION OF LIABILITY. Neither this Settlement Agreement nor anything contained within it shall be admissible in any proceeding as evidence of liability or wrongdoing on the part of either party. However, this Settlement Agreement may be introduced in any proceeding instituted to enforce its terms, pursuant to an order protecting its confidentiality.

2. PROMISE TO PAY. In full settlement of the Controversies, [Agency] shall pay to [Contractor] the amount of _____ dollars on or before ____[date]____. Should such payment not be issued to Contractor by said date, simple interest on such amount shall accrue, beginning on the day after said date through the date payment is issued to Contractor, at the interest rate(s) published by the United States Secretary of the Treasury semi-annually for purposes of the Prompt Payment Act, 31 U.S.C. §§ 3901-3907 (1994). Such interest shall be paid to Contractor along with payment of the aforesaid settlement amount. Contractor agrees to waive its right to sue for breach of the payment provisions of this Settlement Agreement, provided that all amounts due hereunder, including all applicable interest, are received by Contractor within _____ days of the execution of this Settlement Agreement.

3. DISMISSAL. Upon receipt of the payment referenced in Paragraph 2 hereof, Contractor shall immediately file a [motion]/[request] with the ODRA seeking dismissal of [Case Docket Number] with prejudice, by reason of the parties' settlement.

4. MUTUAL RELEASE OF ALL CLAIMS. In consideration for their faithful performance of the terms of this Settlement Agreement, the parties, for themselves, their successors, assigns, and (in the case of the Contractor) subcontractors (at any tier), do hereby relinquish, waive, release, acquit and forever discharge each other of and from any and all claims, disputes, actions, charges, contractual obligations, complaints, causes of action, rights, demands, debts, damages, or accountings of whatever nature, at law or in equity, known or unknown, asserted or not asserted, which they have now or may have in the future against one another, based on any actions or events which occurred prior to the date of this Settlement Agreement, including without limitation the aforesaid Controversies and those arising out of or related to the aforesaid [Solicitation]/[Contract], any claims for delay, disruption and impact, any claims (including statutorily based claims) for attorneys' fees and costs incurred in connection with them, and any claims for interest, except as provided for in Paragraph 2 of this Settlement Agreement.

5. BINDING EFFECT. This Settlement Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives.

6. NON-ASSIGNMENT. A party's rights under this Settlement Agreement may not be assigned without the express written consent of the other party, which consent may be given only in accordance with applicable law and regulation.

7. ADDITIONAL DOCUMENTS. The parties agree to execute whatever modification(s) of the Contract and any and all other additional documents as may be reasonably necessary to carry out the terms, conditions and obligations of this Settlement Agreement.

8. INTEGRATION. This Settlement Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Settlement Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and release of claims.

9. SEVERABILITY. If any portions of this Settlement Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.

10. NEGOTIATED TRANSACTION. Each of the parties has participated in the drafting and negotiation of this Settlement Agreement. Accordingly, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by the parties.

11. COUNTERPARTS. This Settlement Agreement may be executed in any number of copies, each of which shall be deemed to be a counterpart original.

12. CONFIDENTIALITY. Each of the parties agrees that the confidentiality of the ADR process leading up to (but not including the terms of) this Settlement Agreement shall be maintained in full accordance with the provisions of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §571, *et seq.* ("ADRA"), and other applicable law. Accordingly, the parties will not voluntarily disclose to any third party any "dispute resolution communication" as defined by the ADRA, including any statements or submissions made in the context of the ADR proceeding, except for purposes mutually agreed to by the parties, such as to justify the ADR settlement to higher authority. Similarly, the Neutral will not voluntarily disclose any communication provided to the Neutral in confidence in the context of the ADR proceeding. **[Note: This provision should be tailored to the circumstances of each individual case.]**

13. REPRESENTATION OF AUTHORITY. Each person signing this Settlement Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date written above.

FEDERAL AVIATION
ADMINISTRATION

By: _____
[Name and Title]

[Name], Counsel for [Agency]

[CONTRACTOR]

By: _____
[Name and Title]

[Name], Counsel for [Contractor]

NEUTRAL

[Name]